

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IT IS SO ORDERED.  
*s/ Dan Aaron Polster*  
DAN AARON POLSTER  
U.S. DISTRICT JUDGE

Dated: August 29, 2023

IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**OPTUMRX, INC. AND EXPRESS SCRIPTS, INC.'S MOTION  
FOR THE COURT TO HOLD THE AUGUST 30, 2023 STATUS CONFERENCE  
ON THE RECORD WITH A COURT REPORTER**

In accordance with MDL Order 2804-69 (Special Master Appointment Order), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx and Express Scripts, Inc. move the Court to hold the upcoming August 30, 2023 status conference (12:00 p.m. ET) on the record before a court reporter.

**DISCUSSION**

“All proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). And “such other proceedings . . . as may be requested by any party to the proceeding” must be recorded. 28 U.S.C. § 753(b)(3); *see also United States v. Robinson*, 459 F.2d 1164, 1170 (D.C. Cir. 1972) (per curiam) (proceedings covered by the Act include “bench conferences” and “arguments of counsel”). Section 753(b)’s requirements are “mandatory,” and courts have a “duty” to meet them. *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985); *Pittsburgh v. Simmons*, 729 F.2d 953, 955 (3d Cir. 1984) (“when counsel desires to go on the record, we can find no reason for a judge to decline to do so”).

Given the parties’ status updates to the Court on August 28, the August 30 conference will likely cover issues for which OptumRx and Express Scripts want to create a record, including the